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**DIAMOND MCCARTHY LLP**

909 Fannin, Suite 1500  
Houston, Texas 77010  
Telephone (713) 333-5100  
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800  
Email: [adiamond@diamondmccarthy.com](mailto:adiamond@diamondmccarthy.com)  
Eric D. Madden, TX State Bar No. 24013079  
Email: [emadden@diamondmccarthy.com](mailto:emadden@diamondmccarthy.com)

Special Litigation Counsel for USACM Liquidating Trust and  
USA Capital Diversified Trust Deed Fund, LLC

**LEWIS AND ROCA LLP**

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Telephone (702) 949-8320  
Facsimile (702) 949-8321

Rob Charles, NV State Bar No. 006593  
Email: [rcharles@lrlaw.com](mailto:rcharles@lrlaw.com)

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

In re:  
USA SECURITIES, LLC,  
Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases Under  
Case No. BK-S-06-10725-LBR

Judge Linda B. Rieggle

**NOTICE OF MOTION FOR  
APPROVAL OF SETTLEMENT  
PURSUANT TO RULE 9019 OF  
THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE**

Hearing Date: February 15, 2011  
Hearing Time: 10:30 a.m.

**NOTICE IS HEREBY GIVEN** that a Motion for Approval of Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion"), seeking entry of an order approving the Settlement Agreement, Mutual Release, and Covenants between the

USACM Trust, on the one hand, and Joseph D. Milanowski (“Milanowski”), on the other hand was filed on January 14, 2011 by the USACM Liquidating Trust [Dkt. No. \_\_\_\_].

Following extensive arms-length negotiations, the USACM Trust (among other plaintiffs), on the one hand, and Milanowski, on the other hand, reached an agreement to resolve the adversary proceeding instituted by USACM Trust pursuant to 11 U.S.C. § 523 to determine the dischargeability of the debt Mr. Milanowski purportedly owes to the USACM Trust, subject to approval by the Bankruptcy Court under Federal Rule of Bankruptcy Procedure 9019. The material terms of the Proposed Settlement Agreement are summarized as follows<sup>1</sup>:

- **Agreed Judgment.** Milanowski will agree to a judgment in the amount of Five Million Dollars (\$5,000,000.00) in favor of the USACM Trust and DTDF (the “USA Capital Agreed Judgment”). Milanowski agrees that the judgment will not be dischargeable in the Milanowski Bankruptcy Case. DTDF will share in the settlement as a beneficiary of the USACM Trust and as otherwise outlined in the agreement between the USACM Trust and DTDF filed with the Court on March 13, 2008.
- **Bankruptcy Court Approval.** The Proposed Settlement Agreement is contingent upon this Court’s approval of the settlement under Rule 9019 of the Federal Rules of Bankruptcy Procedure.
- **Mutual Release.** Upon the Court’s approval of the settlement and the execution and entry of the USA Capital Agreed Judgment, the USACM Trust and Milanowski will exchange full mutual releases as to all claims that they ever had, now have, or may at any future time have against each other.
- **Cooperation.** Milanowski will cooperate with the USACM Trust and DTDF in connection with *USA Capital Diversified Trust Deed Fund, LLC v. Thomas A. Hantges*, pending as adversary proceeding number 08-01041 in the Bankruptcy Court and *USACM Liquidating Trust v. Thomas A. Hantges*, pending as adversary proceeding number 08-01042 in the Bankruptcy Court.

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<sup>1</sup> The following is solely a summary of the terms of the Settlement Agreement, and in no way is intended as an amendment, modification, or supplementation of the Settlement Agreement terms. The terms of the written settlement agreement between the Parties shall prevail in the event of any conflict with this summary. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

1           **NOTICE IS FURTHER GIVEN** that if you do not want the Court to grant the relief  
2 sought in the Motion, or if you want the Court to consider your views on the Motion, then you  
3 must file an opposition with the Court, and serve a copy on the person making the Motion ***no***  
4 ***later than 14 days*** preceding the hearing date on the Motion. The opposition must state your  
5 position, set forth all relevant facts and legal authority, and be supported by affidavits or  
6 declarations that conform to Local Rule 9014(c).  
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8           If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response  
9 to the Motion with the Court. You ***must*** also serve your written response on the person who sent  
10 you this notice.

11           If you do not file a written response with the Court, or if you do not serve your written  
12 response on the person who sent you this notice, then:

- 13           • The Court may *refuse to allow you to speak* at the scheduled hearing; and
- 14           • The Court may *rule against you* without formally calling the matter at the hearing.

15           **NOTICE IS FURTHER GIVEN** that the hearing on the said Motion will be held before  
16 the Honorable Linda B. Riegle, United States Bankruptcy Judge, in the Foley Federal Building,  
17 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom No. 1, Las Vegas, Nevada  
18 89101 on **Tuesday, February 15, 2011, at 10:30 a.m.**  
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DATED: January 14, 2011.

**DIAMOND MCCARTHY LLP**

By: /s/ Michael J. Yoder

Allan B. Diamond, TX 05801800 (pro hac vice)

Eric D. Madden, TX 24013079 (pro hac vice)

Michael J. Yoder TX 24056572 (pro hac vice)

909 Fannin, Suite 1500

Houston, Texas 77010

(713) 333-5100 (telephone)

(713) 333-5199 (facsimile)

*Special Litigation Counsel for  
USACM Liquidating Trust*

**LEWIS AND ROCA LLP**

By: /s/ Rob Charles

Rob Charles, NV 6593

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169-5996

(702) 949-8320 (telephone)

(702) 949-8321 (facsimile)

*Counsel for USACM Liquidating Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of January 2011, I caused to be served a true and correct copy of the foregoing **NOTICE OF MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE** by electronic transmission to the USACM Post-Confirmation Service List Dated March 31, 2009, and by electronic transmission to (1) counsel for Joseph Milanowski, Russ Walker at [rwalker@wklawpc.com](mailto:rwalker@wklawpc.com); (2) counsel for DTDF, Chas Harvic at [Chas.Harvick@FTIConsulting.com](mailto:Chas.Harvick@FTIConsulting.com); (3) counsel for the Investor Complainants, Janet Chubb at [jchubb@ArmstrongTeasdale.com](mailto:jchubb@ArmstrongTeasdale.com); (4) counsel for the Mountain West Complainants, George Lazar at [GLazar@foxjohns.com](mailto:GLazar@foxjohns.com); and (5) the United States Trustee, Augie Landis at [Augie.Landis@usdoj.gov](mailto:Augie.Landis@usdoj.gov).

/s/ Catherine A. Burrow  
Catherine A. Burrow  
Senior Paralegal  
Diamond McCarthy LLP